

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:11-cv-136-RJC

TERRANCE L. JAMES-BEY,)	
)	
Petitioner,)	
)	
v.)	
)	<u>ORDER</u>
STATE OF NORTH CAROLINA,)	
NORTH CAROLINA DEPARTMENT)	
OF CORRECTIONS, UNITED STATES)	
CORPORATION,)	
)	
Respondents.)	
)	

THIS MATTER is before the Court on the Petitioner's Motion for Relief from Judgment or Order, (Doc. No. 24).

The Court dismissed Petitioner's 2254 petition on January 12, 2012. (Doc. No. 9).

Petitioner filed a Petition for Reconsideration and Evidentiary Hearing, (Doc. No. 21), in May 2012. In his motion, Petitioner re-argued that North Carolina lacked jurisdiction over him and asserted new arguments based on how the State indicted him. The Court treated the motion as a successive habeas application and dismissed for his failure to seek prior authorization from the Fourth Circuit. (Doc. No. 23); see also United States v. Winestock, 340 F.3d 200, 206 (4th Cir. 2003) (“[A] motion directly attacking the prisoner's conviction or sentence will usually amount to a successive application . . . a brand-new, free-standing allegation of constitutional error in the underlying criminal judgment will virtually always implicate the rules governing successive applications. Similarly, new legal arguments or proffers of additional evidence will usually signify that the prisoner is not seeking relief available under Rule 60(b) but is instead continuing

his collateral attack on his conviction or sentence.”); 28 U.S.C. § 2244(3)(A) (“Before a second or successive [habeas] application . . . is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.”).

Petitioner has now filed another post-judgment motion re-arguing his case. (Doc. No. 24). This motion is also properly treated as a successive habeas application and must be dismissed for his failure to seek prior authorization from the Fourth Circuit. Petitioner’s Motion for Relief from Judgment or Order, (Doc. No. 24), is **DENIED**.

IT IS, THEREFORE, ORDERED that:

1. Petitioner’s Motion for Relief from Judgment or Order, (Doc. No. 24), is **DENIED**; and
2. It is further ordered that pursuant to Rule 11(a) of the Rules Governing Section 2254 and Section 2255 Cases, this Court declines to issue a certificate of appealability. See 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 338 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong); Slack v. McDaniel, 529 U.S. 473, 484 (2000) (when relief is denied on procedural grounds, a petitioner must establish both that the dispositive procedural ruling is debatable and that the petition states a debatable claim of the denial of a constitutional right).

Signed: July 18, 2012

Robert J. Conrad, Jr.

Robert J. Conrad, Jr.
Chief United States District Judge

